

Date: December 22, 1999

DSL-BQA-99-075

To: Home Health Agencies

HHA 39

Supersedes memo BQA 98-049

From: Jan Eakins, Chief, Provider Regulation & Quality Improvement Section

cc: Sue Schroeder, Director, Bureau of Quality Assurance

Attached is a copy of *Program Memorandum, Transmittal No. 99-1* that we received from the federal Health Care Financing Administration. The intent of this memorandum is to provide sufficient information for State Survey Agencies to differentiate between branch office(s) and subunits of the parent home health agency.

This memorandum supersedes program memorandum, Transmittal No. 98-1, dated August 1998, related to parent, branch and subunit criteria previously sent to you via DSL-BQA-98-049.

Questions regarding this information should be directed to Juan Flores , Supervisor, Health Services Section at (608) 261-7824 or Barbara Woodford, Home Health Nurse Consultant, Provider Regulation and Quality Improvement Section at (715) 855-7310.

**Program Memorandum - State Survey Agencies
Department of Health and Human Services, Health Care Financing Administration
Transmittal No. 99-1 - Date AUGUST 1999**

This Program Memorandum re-issues Program Memorandum 98-1 dated August 1998. The only change is the discard date; all other material remains the same.

Change Request #N/A

SUBJECT: Policy Clarification: Home Health Agency (HHA) Parent, Branch, and Subunit Criteria

The purpose of this Program Memorandum is to consolidate and clarify the Health Care Financing Administration's (HCFA) guidelines for distinguishing between branch office(s) and subunits of parent HHAs. Although these terms are defined at 42 CFR 484.2, it has come to HCFA's attention that there may be some variation among HCFA Regional Offices (RO) and individual States as to how these definitions are applied when attempting to categorize particular HHA locations as branches or subunits. These guidelines have been issued previously in regulations and program manuals, as well as in letters to ROs, HHA providers, and various professional organizations. Also, HCFA has included in these guidelines pertinent portions of Departmental Appeals Board (DAB) decisions where the status of a particular HHA location (branch or subunit) was the issue.

One purpose of the Medicare HHA certification process is to ensure that providers meet the Conditions of Participation (CoP) at 42 CFR PART 484, of which the regulatory definitions of parent HHA, branch office, and subunit are a part. HCFA is also responsible for ensuring that, consistent with §1861(v)(1)(A) of the Social Security Act, Medicare only pays for those costs that are necessary for the efficient delivery of needed health services. How a provider is paid for those services by Medicare is a decision of HCFA. The burden of demonstrating that a particular location is a branch, subunit, or parent is on the HHA requesting such approval. These guidelines will be applied to all initial applicants for Medicare participation and to all HHAs already in the Medicare program at the time of the HHA's routine resurvey.

In most cases, a survey of an existing, previously approved branch that you now determine should be a subunit will not be needed. In such a situation, you should follow the existing survey and certification rules for issuing a provider agreement and number to the subunit, and use an effective date agreed upon by the RO Division of Medicare. However, if you discover a "branch" that has never been identified to the State agency (SA) or HCFA that is subsequently determined to be a subunit, an onsite survey in accordance with the usual survey and certification rules will apply. Note that a subunit may have branches. An onsite survey will also be necessary for any location where the HHA has not provided services to Medicare beneficiaries in the past that the HHA now proposes to operate as a branch, and that HCFA determines on the basis of the information provided, is a subunit.

As part of the provider certification process, an existing Medicare approved HHA must provide notification to HCFA of its proposal to add a nonparent location, i.e., branch or subunit. HCFA must then determine if the CoP continue to be met with the inclusion of the additional location. In the absence of notification, HCFA cannot determine whether the requirements critical to health and safety are met at the nonparent location. A provider may not bill Medicare for services provided by either a branch or subunit where the branch or subunit is not a part of an approved HHA or where the branch or subunit has not been determined to meet the applicable CoP.

While the HHA may notify the SA of its proposal to establish a nonparent location, and the SA may make a recommendation to the HCFA RO in a particular case, it is the HCFA RO which has the authority for determining the nonparent's status as a branch or subunit.

The following guidelines should be used when making a determination as to whether a proposed HHA unit is a parent, branch, or subunit as defined at 42 CFR 484.2.

A. In accordance with 42 CFR 484.2:

1. Parent agency means the agency that develops and maintains administrative controls of subunits and/or branch offices;
2. Branch office means a location or site from which an HHA provides services within a portion of the total geographic area served by the parent agency. The branch office is part of the HHA and is located sufficiently close to share administration, supervision, and services in a manner that renders it unnecessary for the branch independently to meet the CoP as an HHA; and
3. Subunit means a semi-autonomous organization that does the following:
 - a. Serves patients in a geographic area different from that of the parent agency; and
 - b. Must independently meet the CoP for HHAs because it is too far from the parent agency to share administration, supervision, and services on a daily basis.

B. As defined in 42 CFR 484.2, supervision means authoritative procedural guidance by a qualified person for the accomplishment of a function or activity. Unless otherwise specified in this part, the supervisor must be on the premises to supervise an individual who does not meet the qualifications specified at 42 CFR 484.4. References to supervision are found at 42 CFR 484.14(d), 484.30(a), 484.32, 484.34 and 484.36(d).

C. Administration means those CoP described at Subpart B of 42 CFR 484.

D. Services means those CoP described at Subpart C of 42 CFR 484.

In determining whether an applicant is a branch, parent, or subunit, these guidelines should be applied on a case-by-case basis and in consideration of all factors in the individual case.

The regulations require that a branch must be "sufficiently close" to share administration, supervision, and services in a manner that makes it unnecessary for the branch to meet the CoP on its own. To accomplish this, the parent agency must be physically located so that sharing of administration, supervision, and services with the branch can occur on a daily basis. If the parent is not capable of sharing such functions with the branch on a daily basis, then the nonparent office or location must independently meet the CoP. Supervision requires, unless it is otherwise specified in the regulations, that a qualified person be physically present during the provision of services by any individual who does not meet the qualifications specified at 42 CFR 484.4. Reliance on a telephone, facsimile, or other electronic device as opposed to the physical presence of the supervisor does not satisfy this requirement. A major aspect of supervision is supervision of the HHA's personnel in the furnishing of services to patients on the patients' premises.

Mileage and travel time are appropriate factors to consider, on a case-by-case basis, in making the determinations regarding the regulatory requirements of "sufficiently close." Additional factors include "serves patients in a geographic area different from that of the parent" and "too far from the parent to share administration, supervision, and services on a daily basis." While factors relating to each determination may vary, the DAB recently concluded that where the driving time between a parent office and branch had the potential to take as long as one and one half hours, it was too long to ensure safe and timely treatment of the branch's patient on a shared basis with the parent. (See *Homelife Nursing Inc. v. HCFA*, DAB Decision No. CR 417 (March 26, 1996).)

"Geographic area," in terms of the regulatory HHA definition, generally means the location, i.e., address of the clients served by the parent and nonparent. If the nonparent office is located within a portion of the total

geographic area served by the parent, but serves patients outside the geographic area, then the nonparent should not be a branch and would be classified as a subunit. This is consistent with the subunit definition that applies to a nonparent office that serves patients in a geographic location different from the parent.

In addition, consider that the sharing of HHA administration, supervision, and services may occur at any time and could flow in either direction, i.e., parent to branch or branch to parent.

1. If a nonparent reports directly to the home or corporate office or some other office other than the alleged parent HHA, it is more likely a subunit rather than a branch and as such must independently meet the CoP.
2. If the parent HHA and the nonparent use totally different staffs, it is less likely they are sharing functions on a daily basis, and it is therefore less likely that a parent/branch relationship exists.
3. The fact that the nonparent office is located in a different metropolitan statistical area (MSA/Non-MSA) from that of the parent is a consideration in making determinations about geographic areas. Commuting patterns are one consideration in the establishment of MSAs. If the parent and nonparent are in different MSAs, it may reflect that the nonparent is not within sufficient proximity to the parent to share functions on a daily basis. This is especially true if the parent and nonparent are in non-contiguous MSAs.
4. If the parent and nonparent are incapable of sharing emergency functions, including services, on a daily basis, the nonparent is probably not a branch.
5. State licensure laws which define parent, branch, and/or subunit are a consideration in making nonparent determinations, but it is the definitions in the Federal regulations (42 CFR 484.2) that must be satisfied in making parent, branch, or subunit determinations. If an HHA operates across State lines follow the instructions in §2184 of the State Operations Manual. The SA in the State in which the parent is located should take the lead in coordinating with the adjacent State to resolve parent and nonparent issues.
6. The fact that the Joint Commission on the Accreditation of Healthcare Organizations or the Community Health Accreditation Program have awarded branch status to a location will not affect HCFA's parent/nonparent decision. HCFA's determination will be based on its independent application of its regulations to the facts in the case.

The above guidelines are to be applied on a case-by-case basis and applied as uniformly as possible consistent with proper program administration.

This Program Memorandum may be discarded after August 31, 2000.

For further information, contact Mike Goldman at (410) 786-6813.